TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 26, 1897.

(16,727.)

(16,727.)

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1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

In the Circuit Court, Fourth Circuit. In Equity.

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, on the first Monday in August, A. D. 1897, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

THE W. A. VANDERCOOK COMPANY, a Corporation Created and under the Laws of the State of California, Complainant,

versus

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN, Defendants.

Be it remembered that heretofore, to wit, on the 3rd day of May, A. D. 1897, appeared the said complainant, The W. A. Vandercook Company, in the aforesaid circuit court, by its attorneys, Messrs. Bryan & Bryan, and filed its bill of complaint against the aforesaid defendants; which bill is in the words and tenor following:

2 *Bill of Complaint.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

To the honorable the judges of the circuit court of United States for the district of South Carolina:

The W. A. Vandercook Company, a corporation created by and under the laws of the State of California, a citizen and resident of the State of California, bring this their bill against S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman, and all other persons claiming to act as constables or officials of the State of South Carolina under the act of the General Assembly of the State of South Carolina generally known as the "dispensary law," approved March 5, 1896, and amended March 6, 1897 (which other persons when their names are discovered your orator prays may be made parties defendant to this bill), citizens and residents of the State of South Carolina; and thereupon your orator complains and says:

I. That your orator was at the times hereinafter mentioned and is now a corporation created by and under the laws of the State of California and a citizen and resident of the State of California, having its principal office and place of business in the city of Alameda, opposite the city of San Francisco, in the State of California.

II. That the defendants, S. W. Vance, W. N. Bahr, J. M. Scott, William Livingston, C. S. Moseley, M. Peterman, were at the times hereinafter mentioned and now are citizens and residents of the State of South Carolina.

3 III. That your orator has for many years heretofore and now is the proprietor of certain well-known vineyards in the State of California known as the vineyards in the San Gabriel, Santa Clara, Fresno, Sonoma, and Napa valleys, and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particularly of clarets, Rhine wine, Burgundies, and champagnes.

IV. That in the month of February and early part of March, 1897, your orator, by its travelling agent, Robert Randolph Turner, a citizen of the State of Virginia, contracted with and took the orders of certain citizens and residents of the State of South Carolina, residing in the city of Charleston, to deliver to each of the same in the city of Charleston certain original packages of wines and brandies, products of your orator's vineyards, then and there agreed upon and ordered by the said residents respectively in the said city of Charleston, and in pursuance thereof your orator filled said orders and shipped, on 20th day of March, 1897, from San Francisco, California, by the Southern Pacific R. R. ("Sun Set") route, to its agent in the city of Charleston, S. C., one car-load of such wines, &c., products of your orator's vineyards as aforesaid, the wine, &c., for each of said purchasers and customers of your orator in the city of Charleston, as ordered, being in separate original packages in said car contained to the number of seventy-three packages, all marked with your orator's stamp, as follows: "W. A. Vandercook, Los Angeles, California," and also marked with specific brand of wine, &c., respectively, more particularly set forth in the schedule marked "A" and hereto annexed and made part of the bill, and of the value of twelve hundred dollars; that the rate of freight in shipping said wines and packages, &c., by such car-load is only about one-fourth of the rate of shipping by single packages.

V. That on or about the 16th day of April, 1897, the said car-load of wines, &c., as aforesaid, arrived at its destination at

4 Charleston, South Carolina, at the depot of the South Carolina & Georgia Railroad Company, an interstate common carrier between the city of Augusta, in the State of Georgia, and the city of Charleston, in the State of South Carolina, and the last connecting railroad common carrier in the continuous carriage of said goods from the city of San Francisco, in the State of California, to the city of Charleston, S. C., and while in the depot of and in the custody of said South Carolina & Georgia Railroad Company, as aforesaid, at Charleston, South Carolina, the said defendants, W. N. Bahr and J. M. Scott, claiming to act as State constables under the said act of the General Assembly of South Carolina approved March 6, 1896, and amended March 5, 1897 ("dispensary law"), unlawfully and wrongfully seized without warrant the said seventy-three packages and stopped the delivery thereof; and thereafter, on the 19th day of April, 1897, without warrant took and carried away

from the depot of the said South Carolina & Georgia Railroad Company, in the city of Charleston, sixty of the packages of said wines, &c., more particularly set forth in schedule marked "B," hereto annexed and made part of this bill, of the value of eight hundred dollars, and shipped the same on 19th April, 1897, to one John T. Gaston, at Columbia, S. C., claiming to act as "State commissioner" under said "dispensary law," as aforesaid; and thereafter, on or about the 22nd April, 1897, said sixty packages (as set forth in Exhibit "B") came into the possession of the defendant S. W. Vance at Columbia, S. C., claiming then and now to act as "State commissioner" under said dispensary law, with full notice from your orator of said trespass and wrongful seizure, and who now unlawfully refuses and has repeatedly refused to return said wines, packages, &c., and continues, after repeated demands, to unlawfully detain the same and threatens to convert and sell the same to the citizens and residents of the State of South Carolina.

VI. And your orator further shews that the said defendants, W. N. Bahr and J. M. Scott, and other constables, claiming to act as
5 dispensary officials of the State of South Carolina (whose names are unknown to your orator), unlawfully threatened to seize, wherever found, all the wines, &c., whatsoever and for whatsoever purpose of your orator, shipped from San Francisco or elsewhere by your orator and arriving at the city of Charleston by said South Carolina & Georgia Railroad Company, or elsewhere in the State of South Carolina, and to take and carry away same and deliver same to the said S. W. Vance, claiming to act as State commissioner, who also unlawfully threatens to convert and sell the same to the manifest harm, injury, and damage of your orator and the obstruction and destruction of its lawful business and interstate trade and commerce in said wines, &c., with the citizens and residents of the State of South Carolina, secured by and under the Constitution and laws of the United States.

VII. And your orator further shows that since the 20th day of March, 1897, your orator has upon like orders heretofore had and obtained, through its said travelling agent, R. Randolph Turner, from the citizens and residents of the State of South Carolina, further shipped from San Francisco, California, about one-half carload of wines, &c., containing nineteen separate original packages of the value of three hundred dollars, all bearing the stamp of your orator, "W. A. Vandercook, San Francisco and Los Angeles, California," and marked, respectively, with the brand of wine (more particularly set forth in Exhibit "C," hereto annexed and made part of this bill), to its agent at Charleston, S. C., for its said customers, in separate original packages, in fulfilment of their said orders respectively, and said shipment arrived in the city of Charleston, S. C., by the said South Carolina & Georgia R. R., interstate common carrier, as aforesaid, in due course of transportation, on the — day of April, 1897, and that defendants W. N. Bahr, C. S. Moseley, and J. M. Scott and others of said defendants wrongfully seized the same and stopped the delivery thereof from the South Carolina
6 & Georgia Railroad Company on or about the 28th day of April, 1897, and further seized four packages of the same

(being four cases of wine) after delivery of same to the drayman of Eugene L. Tessier, one of said purchasers and customers of your orator, in the depot yard of the said South Carolina & Georgia railroad, and took said four packages from the said dray and carried away the same, and on the 29th day of April, 1897, took from the custody of the South Carolina & Georgia railroad, interstate common carrier, as aforesaid, eight packages of said shipment set forth in Exhibit "D," hereto annexed as part of this bill; and your orator further shows that in fulfilment of further separate specific orders from the citizens and residents of South Carolina, already so obtained by its said travelling agent, R. Randolph Turner, it is now about to ship from San Francisco, California, other shipments in original separate packages of its wines, &c., products of its own vineyards, to its said customers resident in South Carolina, upwards of fifty-eight packages, of the value of seven hundred dollars and upwards, and to ship also continually hereafter to its said customers, residents of the State of South Carolina, in due course of interstate trade and commerce and supply of their continuous want of and demand for the wines and products of your orator's vineyards, large shipments in original separate packages from time to time, exceeding the value of ten thousand dollars ($10,000.00).

VIII. And your orator further shews that your orator intends in the course of its said business, as aforesaid, further and in addition to said shipments so ordered by its said customers in advance, as aforesaid, to ship also from San Francisco, California, to its agent in the State of South Carolina, and to store and warehouse in the State of South Carolina, and to sell in the State of South Carolina, in the original unbroken packages as imported, as aforesaid, to the residents and citizens of the State of South Carolina, its wines and other liquors, products of its vineyards, as aforesaid, for the
7 lawful use and consumption of the said residents and citizens of the State of South Carolina in the due and lawful exercise of your orator's right of importation of such wines, &c., products of its vineyards, into the State of South Carolina in lawful intercourse, trade, and commerce with the citizens and residents of the State of South Carolina, under the Constitution and laws of the United States, all of which shipments, as aforesaid, the defendants and other persons claiming to act as State constables and officials threaten to seize, take, and carry away, detain, convert, and sell, to the manifest wrong, damage, and injury of your orator and its trade and business, as aforesaid.

IX. And your orator further shews that by and under the terms, principle, policy, and operation of the said dispensary law of the State of South Carolina, as aforesaid, approved March 6, 1896, and amended March 5, 1897, all wines, beers, ales, alcoholic, spirituous, and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina.

And your orator further shows that the wines and other liquors,

products of your orator's vineyards, as aforesaid, are lawful subjects of interstate and foreign trade and commerce.

And your orator further shews that the said dispensary law of the State of South Carolina, in so far as it authorizes any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce, and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with art. I, sec. 8 and 9, of the Constitution of the United States, and is unconstitutional, null, and void.

8 Your orator further shews that previous to the seizure of said packages, as aforesaid, and before the same were taken and carried away and wrongfully detained by said defendants, as hereinbefore alleged, your orator gave repeated notices to said defendants of the right and privilege of your orator under the Constitution of the United States and warned them as to the consequences of their malicious trespass, but, notwithstanding your orator's repeated notices, demands, and warnings, the said defendants have continued and do continue and threaten to continue in their malicious wrongs, as aforesaid, in seizing and carrying away and converting the property of your orator, as aforesaid, and in restraining and breaking up the lawful trade, commerce, and intercourse, as aforesaid, of your orator with the citizens and residents of the State of South Carolina.

X. Your orator further shews that your orator has already, by the repeated wrongs and trespasses of the defendants, been damaged in its lawful business and trade with the citizens and residents of the State of South Carolina upwards of five thousand dollars, and your orator is threatened with *its* complete destruction of your orator's said business and trade, to the damage of your orator upwards of ten thousand dollars.

XI. And your orator further shows that protection of your orator in the premises at law involves a multiplicity of suits against all said defendants, and that all said defendants claiming to act under the said "dispensary law," as aforesaid, are financially irresponsible and unable to respond to any damages against them or either of them, and under their respective and repeated trespasses and wrongful acts your orator's rights, privileges, and immunities, as aforesaid, under the Constitution of the United States, art. I, sec. 8 and 9, have been and are now being and are threatened to be continually invaded and grossly violated by all said defendants

9 without redress and to the irreparable injury of your orator, and to the continuous unlawful restraint of the said trade, commerce, and intercourse of your orator with the citizens and residents of the State of South Carolina, and to the continuous obstruction and destruction of the lawful business of your orator in the sale, as aforesaid, of such wines, &c., products of its vineyards, to the citizens and residents of the State of South Carolina, and the continuous unlawful restraint of the lawful use and consumption

by the citizens and residents of the State of South Carolina of the products of the vineyards of your orator in the said State of California.

XII. And your orator further shews that your orator has no adequate remedy at law, and without the aid and intervention of this honorable court, where the aforesaid matters are properly cognizable, your orator is remediless in the premises.

To the end, therefore, that your orator may obtain the relief to which it is justly entitled in the premises, it now prays the court to grant it due process by subpœna directed to said S. W. Vance, W. N. Bahr, J. M. Scott, C. S. Moseley, W. Livingston, M. Peterman, defendants hereinbefore named, requiring each of them to appear herein and answer (but not on oath, the same being expressly waived) the several allegations in this your orator's bill contained.

And your orator further prays that upon final hearing it be ordered and decreed that a writ of injunction do issue out of this honorable court enjoining and commanding the defendants and all other persons claiming to act as constables or officials under the said "dispensary law" of the State of South Carolina, as aforesaid, from seizing or attempting to seize, in transit or after
10 arrival or otherwise, carrying away or confiscating, converting, or detaining any of the wines and liquors imported or sent into the State of South Carolina by your orator from his said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina, having the mark and stamp of your orator thereon, to wit, "W. A. Vandercook Co., Los Angeles, California," or from hindering and preventing your orator in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original unbroken packages, as imported, in the State of South Carolina, the wines and liquors, products of the vineyards of your orator, as aforesaid, for lawful use and consumption of the citizens and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in original packages, as imported into the State of South Carolina by your orator, to the citizens and residents of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing your orator or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to your orator by the laws and Constitution of the United States, or hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with your orator, or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by your orator or imported and sold in original packages in the State of South Carolina

by your orator to the citizens and residents of the State of South Carolina.

11 Therefore your orator prays this honorable court to now grant it a temporary writ of injunction, restraining and enjoining the said defendants and all other persons claiming to act as constables or officials under the said "dispensary law" of the State of South Carolina, as aforesaid, from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away or confiscating, converting, or detaining any of the wines and liquors imported or sent into the State of South Carolina by your orator from his said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina, having the mark and stamp of your orator thereon, to wit, "W. A. Vandercook, San Francisco and Los Angeles, California," from hindering and preventing your orator in further importing or sending into the State of South Carolina for such sale and storing and warehousing and selling in original unbroken packages, as imported, in the State of South Carolina, the wines and liquors, products of the vineyards of your orator, as aforesaid, for lawful use and consumption — and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, &c., as aforesaid, sold in original packages, as imported into the State of South Carolina by your orator, to the citizens and residents of the State of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing your orator or any of its agents or servants and officers in any way whatsoever from carrying on interstate trade, commerce, and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them by the laws and Constitution of the United States, or hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse

12 with your orator, or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by your orator or imported and sold in original packages in the State of South Carolina by your orator to the citizens and residents of the State of South Carolina.

And your orator further prays for such other and further relief as may be just and equitable.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed May 3rd, 1897.)

13 EXHIBIT "A."

41 kegs wine, California.
10 kegs brandy, California.
20 cases wine, California.
2 cases champagne, California.

—

73 packages.

All marked "J. S, Charleston, S. C.," and having stamp of "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

14 EXHIBIT "B."

14 cases California wine.
33 kegs California wine.
½ barrel California wine.
1 case champagne (California).
½ case champagne (California).
1 case brandy (California).
9 kegs brandy (California).

All marked "J. S., Charleston," and all bearing the stamp "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

15 EXHIBIT "C."

5 gals. California brandy.
5 " " "
1 case California assorted wine.
2 " " "
1 " " "
1 " " claret.
1 " " Reesling.
5 gals. " claret.
1 case " claret.
1 " " Burgundy.
1 " " Sauterne.
1 " " assorted wine.
1 " " "
1 " " Angelica.
10 gals. " claret.
1 case " Sauterne.
1 case " assorted wine.
1 " " "

19 packages.

All marked ("J. S., Charleston") and all bearing the stamp "W. A. Vandercook, San Francisco, Los Angeles, California."
(Filed May 3rd, 1897.)

16 EXHIBIT "D."

1 case California assorted wines.
1 case California Angelica wines.
1 case California assorted wines.
1 keg (5 gals.) California claret.
1 case California Reisling.
1 keg California brandy.
1 keg California brandy.
1 case California assorted wines.

All marked ("J. S., Charleston") and all bearing the stamp, "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

17 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared R. Randolph Turner, agent of the complainant, W. A. Vandercook Co., and makes oath that he has read the foregoing bill of complaint, and that the facts therein stated are true to his own knowledge.

R. RANDOLPH TURNER.

Sworn to before me this 30th day of April, 1897.

ARTHUR BRYAN,
[SEAL.] *Notary Public for S. C.*

(Filed May 3rd, 1897.)

18 *Subpœna ad Re.*

THE UNITED STATES OF AMERICA, }
Fourth Circuit, District of South Carolina. }

The President of the United States of America to S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of June, 1897, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of W. A. Vandercook Company.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or caused to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, South Carolina, district aforesaid, the third day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the sovereignty and Independence of the United States of America.

BRYAN & BRYAN,
Complainant's Solicitors.

19 *Memorandum.*

The defendants will take notice that they are required to enter their appearance in this suit, in the clerk's office of the circuit court of the United States for the district of South Carolina, on or before

the first Monday of June, 1897; otherwise the bill will be taken *pro confesso* against them.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

[SEAL.]

(Filed May 3rd, 1897.)

20 *Marshal's Return of Service.*

UNITED STATES OF AMERICA,
District of South Carolina.

John T. Thornton, dep. marshal, being first duly sworn, saith on oath that he has served the within writ on S. W. Vance, the defendant herein, by delivering to him personally a copy thereof, at the same time exhibiting to him the original, at his place of business, State dispensary, at Columbia, S. C., on this 4th day of May, 1897, and he knows the said S. W. Vance to be the defendant named herein, and that deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 4th May, 1897.

JOHN BAUSKETT, [L. S.]
U. S. Commissioner for South Carolina District.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within *subpoena ad re.* personally upon W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley on the 3rd day May, 1897, and personally upon M. Peterman on the 4th day May, 1897, all in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. M.

Sworn to before me May 18, 1897.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

21 *Rule to Show Cause.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,

vs.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Petermann, Citizens and Residents of the State of South Carolina, Defendants.

On hearing and filing the bill of complaint herein and on motion of Bryan & Bryan, complainant's solicitors—

It is ordered that the defendants shew cause before this court on

Monday, May seventeenth (17th), 1897, at 10 a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction as prayed in the bill should not issue.

CHARLES H. SIMONTON,
Circuit Judge.

3rd May, 1897.

(Filed May 3rd, 1897.)

22 *Marshal's Return of Service.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

John T. Thornton, dep. marshal, being duly sworn, saith on oath that I have this 4th day of May, 1897, personally served the within rule to show cause on the defendant S. W. Vance by delivering to him a certified copy thereof, and at the same time exhibiting the original to him, at his place of business, State dispensary, at Columbia, So. Ca., and that — knows the said S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 4th day of May, 1897.

JOHN BAUSKETT, [L. S.]
U. S. Com'r for So. Ca. District.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within "rule to shew cause" personally upon W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley on the 3rd day May, 1897, and personally upon M. Peterman on the 4th day May, 1897, all in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. Marshal.

Sworn to before me May 18, 1897.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed May 4th, 1897.)

23 *Return to Rule of S. W. Vance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

And now comes S. W. Vance, upon whom has been served an order requiring him to show cause before this honorable court on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill in the above-entitled cause should not be granted, — says:

1st. That he submits that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this honorable court.

2nd. That he submits that the bill is defective in its allegations and does not state a case coming within the jurisdiction of the court.

3rd. He submits that the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of
24 the matters and things alleged if the said allegations be true.

Respondent further says:

I. He has no knowledge or information sufficient to form a belief as to the matters and things set forth in the 1st, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, and 12th paragraphs of the bill.

II. He admits the second paragraph of the bill.

III. That as to the matters and things set forth in the 5th and 6th paragraphs of the bill he knows nothing except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, South Carolina, on the 19th day of April, 1897, and which were received by him as such commissioner in due course of transportation, the bill of lading for which is hereto attached and made a part of this return; that he received sixty packages, as shown in said bill of lading, and deposited them in the State dispensary, where they are now; that he received from Constable Bahr an appraisement of the said packages and contents, made by S. J. J. Browning, Wm. J. Schneider, and L. S. Byrd, on the 19th day of April, 1897, and sworn to by them, a copy of which original paper is hereto attached as a

part of this return; that he did receive three telegrams from Bryan & Bryan, purporting to be attorneys for owners of said packages, in relation to same of about the purport stated in the 5th paragraph of the bill, and also received one letter from the said attorneys of about the same purport, and that he replied to said messages and letter and did refuse to return the said packages because he believed and was advised that as State commissioner he could not return them for the reason that they had been lawfully seized by the State constables and came rightfully and legally in his possession; that he is advised that the dispensary law of South Carolina approved March 6th, 1896, and as amended 6th March, 1897,
under which the said packages were seized and are now held
25 by him as State commissioner, is an act in the lawful exercise
of the police power of the State, and is not in conflict with the Constitution of the United States and the acts of Congress; that he denies that he is financially irresponsible, as charged in the bill, and also according to the best of his information; that the complainant has — or will be damaged ten thousand dollars.

Respondent further says he denies he is threatening as State commissioner or otherwise to convert and sell the said sixty packages to the wrongful harm and injury of the complainant, but repeats that he is still holding them as a State officer charged with specific duties and not with any intent to hinder or obstruct interstate commerce or to injure the plaintiff in any way, and submits that this honorable court has no jurisdiction to interfere by way of injunction with his duties as State commissioner.

Respondent states that he is at present State commissioner duly appointed and commissioned under the dispensary law; has given the official bond required, and is now and has been since the 20th day of April, 1897, engaged in discharging the duties of his said office.

S. W. VANCE.

Sworn to and subscribed before me this 15th day of May, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed May 17th, 1897.)

26 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each, valued at						$18.00	per	case.		$36	00
1 case brandy,	"	"	"	"	"	4.80	"	"	.	4	80
14 " wine,	"	"	"	"	"	2.40			.	33	60
1 5-gal. keg Angelica wine,				"	"	1.00	per	gal.	.	5	00
1 5 " " Catawba wine, each				"	"	1.00	"	"	.	5	00
8 gals. of claret, XXX,				"	"	1.00	"	"	.	40	00

1 gal. J. B. wine,	valued at	$1.00	per gal..	$5 00
2 10-gal. kegs claret, XXX,	" "	1.00	" " ..	20 00
6 5-gal. port, XX,	" "	1.00	" " ..	30 00
2 10-gal. kegs port, XX,	" "	1.00	" " ..	20 00
4 5-gal. kegs Sheny, XX,	" "	1.00	" " ..	20 00
7 5-gal. kegs Sheny,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, XXX,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, V,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, XX,	" "	1.00	" " ..	10 00
6 5-gal. kegs grape brandy,	" "	2.00	" " ..	60 00
1 10-gal. keg grape brandy,	" "	2.00	..	20 00
1 5-gal. keg grape brandy, XX,	" "	2.00	..	10 00
1 5-gal. keg grape brandy, XXX,	" "	2.00	" " ..	10 00
2 5-gal. keg J. V.,	" "	2.00.....		20 00
1 5-gal. keg rock,	" "	2.00.		10 00
1 half barrel Sheny wine, 27½ gal.,	" "	.80.....		22 00

27 We, the undersigned citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.
JOHN W. HILLIAM, *Not. Pub.*

(Filed May 17th, 1897.)

28 *Return to Rule of W. N. Bahr and J. M. Scott.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the circuit court of the United States for the district of South Carolina:

And now comes W. N. Bahr and J. M. Scott, defendants in above-entitled action, upon whom has been served an order requiring them to show cause before this honorable court, on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill should not be granted, — say:

I. They submit that the bill presents no question arising under

the Constitution or laws of the United States to give jurisdiction to this honorable court.

II. They submit that the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court.

III. They submit that the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are
29 plain and adequate remedies at law for the correction and redress of the matters and things alleged.

Your respondents further show that W. N. Bahr is chief State constable and J. M. Scott is State constable, duly appointed and commissioned, and were engaged in the discharge of their duties as such at the times hereinafter mentioned.

I. They say as to the matters and things set forth in the first paragraph of this bill they have no knowledge or information sufficient to form a belief, and demand proof of same.

II. That they admit the allegation of the second paragraph of the bill.

III. That as to the matters and things set forth in the 3rd paragraph of the bill they have no information or knowledge sufficient to form a belief, and demand proof of same.

IV. That as to the allegations of the 4th paragraph of the bill they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandies in Charleston, South Carolina, about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks in said city, and each package was marked J. C. Simonds, and none of them had the certificate of the State chemist attached showing the wines and brandies had been analyzed, as required by law.

V. As to the matters and things set forth in the 5th paragraph, they admit on or about the 15th day of April, A. D. 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charleston, S. C., its point of destination, over the South Carolina & Georgia railroad, and that your respondents, as State constables, did hold up seventy-three packages of wine and liquors in the depot of the said railroad for investigation under the
30 provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded, and the waybill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of First National bank, and each package was marked in his name, and same was delivered to him on 15th day of April, 1897; that after holding up said wines and brandies your respondent Bahr made inquiry and investigation into the matter and on the 18th day of April, A. D. 1897, he received through telephone a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier of First National bank, the party to whom the packages had

been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina & Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that your respondent Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his co-respondent, and was informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had removed them from the depot on orders of J. C. Simonds on the payment of the invoice price of same to him; that after learning these facts he again seized the remaining packages left in the depot on the 17th day
31 of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of same, and a copy of said appraisement, showing number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston, to whom invoices of some of said wine and brandies had been sent, came to your respondent Bahr and asked him to endorse the invoices, so that they could get the packages from the depot; to all of whom he replied that he had nothing held up in their names and had no authority to endorse the invoices, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of these invoices and also a notice from J. C. Simonds, cashier, gave to your respondent Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rohde and C. L. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that your respondent Bahr saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package.

Your respondent Bahr further says that R. R. Turner, the agent of the complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his home and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore respondent advised him not to ship such wines and brandies in one man's name, but to make each individual package separate, and to send to each a bill of lading. Turner then remarked he had been shipping to one man before as he proposed to ship to J. C. Simonds and had never been molested, and he intended to do so again; that it was

about three weeks after this conversation before the car-load
32 arrived and was unloaded in the depot.

That since the seizure of the sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina & Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, 8 packages of wine and brandies consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina & Georgia railroad, which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information from parties to whom he made efforts to sell he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said 8 packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C.

And your respondents deny that the seizure of the said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act approved March 6th, 1897, amended by act approved March 26th, 1897, that they had authority to seize and hold the same, a copy of which said act is hereto attached.

VI. That as to the matters and things set forth in the 6th paragraph of the bill your respondents say that W. N. Bahr is one of the chief State constables, and that J. M. Scott, Wm. Livingston, and C. S. Moseley are State constables; that M. Peterman is one of the policeman of the city of Charleston, and S. W. Vance is State commissioner. They deny that they are threatening or have threatened all the wines to be shipped into the State by the complainant.

VII. That as to the matters and things stated in the 7th paragraph of the bill they have already fully answered, as they have stated that four packages were shipped to E. L. Tessier and
33 seized, but were returned to him, and that eight other packages have been seized consigned to J. C. Simonds and are still held, and did not seize 19 packages, as therein stated; and they deny that they unlawfully seized said packages, but submit they had the authority to do so under the dispensary act approved March 6th, 1896, and as amended March 26th, 1897, and also deny that the complainant has or will be damaged ten thousand dollars.

VIII. They know nothing about the intention of the complainant as to shipment of wines and brandies into the State from their vineyards, but deny that they have threatened to seize, take away, detain, convert, and sell any packages so to be imported by them, to the injury and damage to their trade and business.

IX. Your respondents deny all the matters set forth in the 9th paragraph except as to those relating to letters written to them by attorneys for the complainant, and they admit they did receive two letters—one on the 17th day of April, 1897, before the seizure of the car-load, and one afterwards—of about the import stated, but they

deny they threatened to continue to seize liquors and to break up the lawful trade, commerce, and intercourse of trade.

XX. Your respondents deny the matters and things charged in the 10th paragraph of the bill.

XI. They deny all the matters and things set forth in the 11th paragraph except that charging that they are pecuniarily irresponsible, and this they admit.

XII. They deny the allegations set forth in the 12th paragraph, and submit, as they are advised, that the complainant has an adequate remedy of the law. Your respondents for further cause show that from all the facts herein stated, which can be fully established,

34 the car-load of wine and brandies was delivered to J. C. Simonds by the railroad company, and when so delivered he acquired title to the same, and the complainant cannot maintain the above, it is not the real party in interest.

WM. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 17th day of May, A. D. 1897.

C. P. TOWNSEND, [L. S.]
Not. Pub.

WM. A. BARBER,
Att'y Gen'l, Att'y for Respondents.

(Filed May 17th, 1897.)

35 EXHIBITS TO RETURN OF W. N. BAHR AND J. M. SCOTT.

First National Bank of Charleston, S. C.

CHARLESTON, S. C., 4, 15, 1897.

To Mr. A. W. Petit:

Please call at this bank and attend to draft drawn on you by W. A. Vandercook, San Fran., Cal. Goods are here. On pay't of d'ft we give you order on R. R. for same for $14.25.

JOHN C. SIMONDS, *Cashier.*

36 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. A.W. Petit, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

5 gals. S. Catawba, V–1.25	6 25
4 qts. sherry, 2 X 4 qts. port, 2 X 4 qts. brandy, 2 X	8 00
Keg	00
	$14 25

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight, and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

37 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. D. Rohde, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

10 gals. claret, 3 X, .75	7 50
Keg	1 00
	$8 50

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

38 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. C. L. Schmanke, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

10 gals. brandy, V, 2.75	27 50
5 gals. port, XX, 1.50	7 50
Kegs	2 00
	$37 00

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

39 (Envelope.)

If not called for in ten days return to
W. A. Vandercook Co.,
San Francisco, . . California.

Alameda, Cal.,
11.30 a. m.,
Mar. 24, '97.

Stamp.

Mr. C. L. SCHMANCKE,
560 *King St.*,
Charleston, S. C.

40 South Carolina and Georgia Railroad Co.

L. A. Emerson, traffic manager.

OFFICE TRAFFIC MANAGER,
CHARLESTON, S. C., *April 19th*, 1897.

Mr. W. N. Bahr, chief constable, city.

DEAR SIR: The goods consigned to J. C. Simonds, cashier First National bank, have already been delivered to him and bill of lading taken from him. Consignee was notified that the goods were his, by direction of yourself. I would ask on behalf of the railroad company that you remove the goods from our warehouse, so that we may not be complicated with the consignee, who has threatened us with heavy damages under the interstate law if the goods remain on our premises.

Yours truly,
(S'g'd) J. H. VAUGHAN, *Agent.*

41 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each, valued at		$18.00	per case..	$36	00
1 case brandy, " " "		4.80	" ..	4	80
14 " wine, " " "		2.40	" ..	33	60
1 5-gal. keg Angelica wine,	"	1.00	per gal...	5	00
1 5- " Catawba wine, each	"	1.00	" ..	5	00
8 gals of claret, XXX,	"	1.00	" ..	40	00
1 gal. J. B. wine,	"	1.00	" ..	5	00
2 10-gal. kegs claret, XXX,	"	1.00	" ..	20	00
6 5-gal. port, XX,	"	1.00	" ..	30	00
2 10-gal. kegs port, XX.	"	1.00	" ..	20	00
4 5-gal. kegs Sheny, XX,	"	1.00	" ..	20	00
7 5-gal. kegs Sheny,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, XXX,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, V,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, XX,	"	1.00	" ..	10	00
6 5-gal. kegs grape brandy,	"	2.00	" ..	60	00
1 10-gal. keg grape brandy,	"	2.00	..	20	00
1 5-gal. keg grape brandy, XX.	"	2.00	..	10	00
1 5-gal. keg grape brandy, XXX,	"	2.00	" ..	10	00
2 5-gal. keg J. V.,	"	2.00	..	20	00
1 5-gal keg rock,	"	2.00	..	10	00
1 half barrel Sheny wine, 27½ gal.,	"	.80	..	22	00

42 We, the undersigned, citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are —, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.

JOHN H. HILLIAM, *Not. Pub.*

(Filed May 17th, 1897.)

43 *Response to Rule of Wm. Livingston, C. S. Moseley, and M. Peterman.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

And now come William Livingston, C. S. Moseley, and M. Peterman, upon whom has been served an order requiring them to show cause before this honorable court on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill in the above-entitled cause should not be granted, — says:

I. That your respondents William Livingston and C. S. Moseley are State constables, duly appointed under the dispensary laws of South Carolina, and engaged in the discharge of the duties of such position at the times mentioned in the bill and are now; that your respondent M. Peterman is one of the police of the city of Charleston, and was duly appointed as such under the Metropolitan police law of the State, and is now and has been engaged in the discharge of the duties of such position.

II. That your respondents know nothing about the matters and things set forth in the bill, except those relating to them as
44 officers charged with the execution of the dispensary law of the State, and they deny that they have seized or threatened to seize any wines or liquors proposed to be shipped by complainants to the State, or that they have done anything or threatened to do anything to enjoin complainants or to break up their trade or business.

They admit that they are pecuniarily irresponsible, as stated in the bill.

C. S. MOSELEY.
WM. LIVINGSTON.
M. PETERMAN.

Sworn to and subscribed before me this 17th day of May, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

WM. A. BARBER,
Att'y Gen'l, Att'y for Respondents.

(Filed May 17th, 1897.)

45 *Opinion Granting Temporary Injunction.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY }
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, M. PETERMANN. }

Any State may in the exercise of the police power declare that the manufacture, sale, barter, and exchange or the use as a beverage of alcoholic liquors are public evils, and, having thus declared, can forbid such manufacture, sale, barter, and exchange or use within her territory.

But when a State recognizes and approves the manufacture, sale, barter, and exchange and the use as a beverage of alcoholic liquors and the State itself encourages the manufacture, engages in the sale of and provides for the consumption of alcoholic liquors as a beverage, and so precludes the idea that such manufacture, sale, barter, exchange, or use are injurious to the public welfare, it is not a lawful exercise of the police power to forbid the importation of such liquors or their sale in original packages for personal use and consumption.

Such prohibition under such circumstances is in conflict with the laws of interstate and foreign commerce.

The dispensary act of 1896, as amended by the act of 1897, inasmuch as they approve the purchase and manufacture of alcoholic liquors for the State and provide for the sale of such alcoholic liquors as a beverage in aid of the finances of the State, in so far as they forbid the importation of alcoholic liquors in original packages for personal use and consumption and the sale of such orig-
46 inal packages for such use in this State, are in conflict with the laws of interstate and foreign commerce and are therefore to that extent void.

47 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY }
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, M. PETERMAN. }

This is a bill in equity filed by complainant, a corporation of the State of California, against S. W. Vance, who is State commissioner under the dispensary law, and W. N. Bahr and others, who are State constables appointed to put this law in execution.

The bill alleges that the complainant is the owner of vineyards in the State of California, and that it manufactured from grapes of such vineyards well-known pure wines, brandies, and other liquors, particularly of clarets, Rhine wine, Burgandies, and champagne; that by its travelling agent the complainant took orders from certain citizens and residents of the State of South Carolina to deliver to each of them certain original packages of wines, &c., products of its vineyards, filled said orders, and shipped from San Francisco, in California, to Charleston, South Carolina, by rail, a car-load of its products containing seventy-three separate original packages, for each of its said customers, all marked with its name and address in California, adopting this mode of shipping by car-load in order to obtain a large reduction in freight; that the goods so shipped arrived in Charleston, passing through the hands of several common carriers in continuous route, and thereupon were seized without warrant by defendants Bahr and Scott, and sixty of the packages were shipped by said constables to Columbia to John J. Gaston, then the State
48 commissioner, got into his hands and then into the hands of his successor, S. W. Vance, with full notice of the unlawful seizure, and that Vance, notwithstanding, refuses to deliver them to complainant or its agent after repeated demands, and threatens to convert and sell the same to citizens of South Carolina; that these same constables and others claiming like authority threaten to seize in like manner all wines shipped by complainant into this State, wherever found and for whatever purpose shipped, arriving in said city of Charleston, and in like manner to ship and deliver the same to said S. W. Vance, who likewise threatens to convert the same, to the great damage of complainant and to the obstruction and destruction of its lawful business and interstate commerce and trade in its wines, &c., with citizens and residents of South Carolina. The bill then alleges the shipment of another importation of wines, &c., in separate original packages from its vineyards in California, upon orders from residents of South Carolina, the arrival of the same in South Carolina, and the wrongful seizure of the same by State constables; that other orders have been obtained for other residents of South Carolina for separate original packages, and that upon such order complainant proposes to ship such packages to South Carolina in due course of interstate commerce, and that in the future it intends to seek similar orders and to ship thereupon similar original packages into the State of South Carolina. The bill further alleges that it intends, in the course of its business, further and in addition to such shipments so ordered by customers in advance, to ship also from San Francisco, California, to its agent in the State of South Carolina and to store and warehouse in South Carolina and to sell in the State of South Carolina in the original, unbroken packages, as imported as aforesaid, to residents in South Carolina, its wines and liquors, products of its vineyards, in the due and lawful exercise of its rights under the Constitution and laws of the United States, and that the defendants threaten to seize, take, and carry away, convert, and sell all such shipments. The
49 bill then charges that by the dispensary act of 1897, under which the defendants seek to justify their action, all wines,

beers, ales, alcoholic and other intoxicating liquors are the subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina and have been and are being and will continue to be lawfully used and consumed as a beverage by citizens and residents of the State of South Carolina, and that the products of its vineyards are lawful subjects of interstate and foreign trade and commerce.

The bill then charges that the said dispensary law, in so far as it authorizes the acts of the defendants, or in any way attempts to abridge the right of importation of the products of complainant's vineyards into this State and there to sell in original packages, or in anywise hinders and prevents its intercourse, commerce, and trade with citizens and residents of South Carolina in the products of its vineyards in such original packages, is in conflict with the Constitution of the United States and is null and void.

The bill then alleges facts sustaining the jurisdiction of this court and securing the jurisdiction of the United States Supreme Court, and prays a temporary to be followed by a permanent injunction.

Upon the filing of the bill a rule was issued against the defendants to show cause why the injunction prayed for in the bill be not granted.

The return sets out three jurisdictional exceptions: First, that the bill presents no question arising under the Constitution and laws of the United States; second, that the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court; third, that the bill presents no case for the jurisdiction of a court of equity, as the plaintiff has a plain, adequate, and complete remedy at law. The bare inspection of the bill shows the objections to be unfounded.

The return then addressed itself to the merits. It sets out clearly that the shipments made by complainant were made by bill of lading to a gentleman in this State, in this behalf selected
50 as the agent of complainant, for distribution of the packages and perhaps the receipt of the purchase-money. It then admits the main facts of the bill and charges that the shipments made by complainants and those contemplated by it and the course of dealing in the future which it intends are in contravention of the act of assembly of 1897, the amendment to the dispensary law, and that under that act and the other acts which it amends the course and action of the State officials were justified and were right and proper.

This case brings up squarely the question, Has a producer of alcoholic liquors in another State the right under the Constitution of the United States, in the present condition of the law of South Carolina, to ship into that State his products in original packages and to sell them in the original packages, either upon orders sent in advance of shipments or upon purchases made after shipment and arrival?

The question is one of grave importance. The very able and exhaustive arguments of counsel on both sides have put the court in possession of every arguments which can be used upon it. They

have received a careful consideration, which they and the question to which they were addressed deserved.

Section 8, article I, of the Constitution of the United States declares: "The Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes." * * *

The Supreme Court of the United States have now established, by a current of decisions which cannot be misunderstood, that under this section Congress alone has the right to fix, prescribe, and regulate interstate and foreign commerce, and that no one of the States can in any way interfere with such commerce or prescribe any regulation thereof without the consent of Congress. "While by virtue of its jurisdiction over persons and property within its limits a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to
51 Congress by the Constitution is not within the jurisdiction of the police power of the State unless placed there by congressional action." (Henderson *vs.* Mayor of New York, 92 U. S., 259; Rail Road Company *vs.* Husen, 95 U. S., 465; Walling *vs.* Michigan, 116 U. S., 466; Robbins *vs.* Shelby, 120 U. S., 489.)

"Inasmuch as interstate commerce, consisting in the transportation, purchase, sale, and the exchange of commodities, is national in its character and must be governed by a uniform system so long as Congress does not pass any law to regulate it or allows the State to do so, it thereby indicates its will that such commerce shall be free and untrammelled." (County of Mobile *vs.* Kimball, 102 U. S., 691; Brown *vs.* Houston, 114 U. S., 622; Wabash, &c., Railway *vs.* Illinois, 118 U. S., 557.)

The application of this doctrine to the effect of State legislation upon the importation of alcoholic liquors into a State came up for discussion and decision in Leisy *vs.* Hardin, 135 U. S., 100. That case arose under the prohibition laws of Iowa. Section 1523 of the Code of Iowa provided: "No person shall manufacture or sell by himself, clerk, steward, or agent, directly or indirectly, any intoxicating liquors, except as hereinafter provided. And the keeping of intoxicating liquor with intent upon the part of the owner thereof or any person acting under his authority or by his permission, to sell the same within this State, contrary to the provisions of this chapter, is hereby prohibited and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance shall be forfeited and dealt with as hereinafter provided."

Chapter 71 of Acts of 1882 of Iowa provided: "That after this act takes effect, no person shall manufacture for sale, sell, keep for sale, give away, exchange, barter or dispense, any intoxicating liquor for any purpose whatever, otherwise than is provided in this act. Persons holding permits as herein provided shall be authorized to sell and dispense intoxicating liquors for pharmaceutical and medicinal purposes, and alcohol for specified chemical pur-

poses, and wine for sacramental purposes, but for no other
52 purposes whatever."

The act then provides for the issue of permits for this purpose by the district court of the county; which permits hold good for one year.

These provisions being in full force, Leisy & Co., brewers, in Peoria, Ill., shipped into Iowa by rail to Keokuk sundry barrels of beer in original packages and sold and offered for sale in Keokuk only in unbroken original packages this beer; thereupon it was seized and held subject to the laws of Iowa above quoted. The cause went up through the several State courts into the Supreme Court of the United States. By that court the case was held under deliberation, and finally the opinion was pronounced by the Chief Justice as the organ of the court. The points to be decided are thus put: "That ardent spirits, distilled liquors, ales, and beer are subject of exchange, barter, and traffic like any other commodity in which a right of traffic exists and are so recognized by the usages of the commercial world, the laws of Congress, and the decisions of the courts is not denied. Being thus articles of commerce, can a State in the absence of legislation on the part of Congress prohibit their importation from abroad or from a sister State or when imported prohibit their sale by the importer?"

In answering these questions, the court goes into a full and elaborate examination of all the authorities. The conclusion is expressed in these words: "The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit" (the prerequisites of the Iowa act), "but import beer into Iowa, which they sell in original packages. Under our decision in Bowman *vs.* Chicago, *supra*, they had the right to import the beer into that State, and in the view we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time we hold that in the absence of congressional permission to do so the State had no power to interfere by seizure or any other action in prohibition of importation or sale by the foreign or non-resident importer."

53 Upon the publication of this opinion the Congress, recognizing its force, enacted the act of August 8th, 1890, commonly known as the Wilson act. That act is in these words:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The case of Leisy *vs.* Hardin is discussed in Plumly *vs.* Mass., 155 U. S., 642, and in Everett *vs.* Missouri, 156 U. S., 321, in which case also the act of 1890 is mentioned.

The controlling question in the case before us is, How does the

Wilson act affect the South Carolina statute? In the recent case of Scott against Donald, 165 U. S., 58, a case from this circuit under the dispensary law as it stood before the passage of the present act, the Supreme Court discussed the dispensary law and condemned it. They hold that the Wilson act did not protect it.

This case of Donald *vs.* Scott was brought because of the seizure and confiscation of certain alcoholic liquors, products of other States, imported by the plaintiff for his personal use. The conclusion of the Supreme Court, after full discussion of all the cases bearing upon the question, is: "In the light of these cases the act of South Carolina, January 2nd, 1895 (dispensary law), must as to those of its provisions which affect the plaintiff in the present suits *to* be condemned." (165 U. S., 99.)

This act of 1895 was amended in 1896, and when this decision was published the law was further amended in 1897, and this case will turn on these amendments.

Have the amendments cured the objectionable features in the act of 1895? In Scott *vs.* Donald the Supreme Court say of the
54 act of 1895: "It is important to observe that the statute *was* not purport to prohibit either the importation, the manufacture, the sale, or the use of intoxicating liquors. The first section does, indeed, make it penal to manufacture, sell, barter, deliver, store, or keep in possession any spirituous, malt, vinous, fermented, brewed, or other liquors which contain alcohol and are used as a beverage, except as hereinafter provided, and declares all such liquors contraband. * * * Yet these enactments are not absolute, but are made subject to the subsequent provisions of the act. When these provisions *were* examined we find that, so far from the importation, manufacture, and sale of such liquors being prohibited, these operations are turned over to State functionaries, by whom alone or under whose direction they are carried on." The amending act of 1897 contains provisions almost identical in language, exactly identical in effect. The — 1897 amends section 3 of the act of 1895, and still farther amends section- 15 and 23, which had been amended by the act of 1896, removing from these last two sections features of discrimination. But these changes in nowise meet the criticism of the Supreme Court of the act of 1895. This criticism was not on these discriminations only. The court says: "In view of these and similar provisions it is indisputable that, whatever else may be said of this act, it was not intended to prohibit the manufacture, sale, and use of intoxicating liquors. On the contrary, liquors and wines are recognized as commodities which may be lawfully made, bought, and sold, and must therefore be deemed the subject of foreign and interstate commerce." Section 2 provides that the State board of control shall purchase all liquors for sale in this State. Section 3, after providing for the appointment of a commissioner, prescribes how he shall furnish liquors to the county dispensaries for sale. Section 7 provides for county dispensers, who shall sell liquors. Section 15 provides for granting licenses to manufacture liquors. Section 23 provides for a regular quarterly report from all licensed distillers. These sections, in the act of 1897

sustain the criticism of the Supreme Court. It is clear that before the State can forbid the importation and sale in original packages of alcoholic liquors it must declare the manufacture, sale, and
55 use as a beverage of all alcoholic liquors to be contraband and forbidden, and so take them out of the category of legitimate articles of commerce. She cannot for her own purposes treat these liquors as the subject of foreign and interstate commerce and declare them not to be such to the rest of the world.

The appalling statistics of misery, pauperism, and crime which have their origin and owe their existence to the use or abuse of alcoholic spirits are the justification for police regulations with regard to them and placed them under the control of the police power. Considerations of public safety, the supreme law, override every other, and measures, however drastic, which prevent the existence of this evil will be sanctioned and enforced; but when the State herself for her own purposes furnishes to her citizens these alcoholic spirits, encourages them in their use, puts them at convenient places within her territory for the supply and distribution of them, — enters largely in the business, calculating the profit therefrom as aiding State, county, and municipal treasuries, regulations which would — properly attributable to the police power if used in suppression of the traffic, assume the form of measures tending to support the State's monopoly in the business, act as restrictions upon commerce, and infringe the Federal Constitution. If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person are recognized they belong to commerce and are without the domain of the police power. The act of 1897, like the act of 1895, is condemned on these principles. Neither of them is within the exercise of the police power.

But whilst it is true that some of the direriminating features are now removed from the dispensary features admitted to be fatal to its constitutionality, one, at least, still remains. The markets of this State are closed to the producers in other States. Minnesota *vs.* Barber, 136 U. S., 326. They are closed, it is true, to the
56 producers in this State; but the latter may be under the control of the laws of commerce within the State. The former are protected by the interstate commerce law. It is no justification that laws in conflict with interstate commerce press equally on the citizens and the stranger. Minnesota *vs.* Barber.

A resident of the State may under the present dispensary law send his orders to a producer outside of the State for liquors for his own personal use and consumption, and a limited importation within a restrictive period and under an absolute condition is allowed such resident. The producer is limited to this. He cannot import his goods into this State in any other way. The condition for thi importation is this: Any resident who desires to import liquor for his own personal use and consumption shall first certify to the chemist of the South Carolina College the quantity and kind of liquor he wishes to import, with the name and address of the per-

son from whom he wishes to purchase, stating also that such proposed purchaser will forward to Columbia, S. C., to said chemist a sample of the liquor. On receipt of the sample the chemist immediately proceeds to test it, and if found to be pure and free from any poisonous, hurtful, or deleterious matter he issues a certificate to that effect, giving names of proposed consignor and consignee and the quantity and kind of liquor to be imported, sends it free of expense and postpaid to the consignor, and the liquor can be shipped within sixty days after the date of the certificate, which can be used once only.

It will be noted that the use of alcoholic liquors as a beverage is not prohibited nor is their importation for personal use forbidden, provided such beverages are free from "poisonous, hurtful, and deleterious matter" other than the alcohol in them.

The act provides the essential and conclusive test on this point—the certificate of the chemist of the South Carolina College. The act also declares all alcoholic liquors not tested by the chemist of the South Carolina College and so found to be free "from poisonous, hurtful, and deleterious matter," necessarily matters other
57 than the alcoholic ingredients, to be of a detrimental character and their use and consumption to be against the morals, good health, and safety of the State—that is to say, without any regard whatever to their real character, the presence or absence of the certificate is the sole test. This can be sustained only on the fact that it is a valid inspection law.

There can be no doubt that a State can enact laws protecting its citizens in the purchase of articles, imported or domestic, from purchasing something they did not intend to buy, or adulterated so as to threaten disease or death (Plumly *vs.* Mass., 155 U. S., 461), but it must be a law which protects or at least tends to protect the citizen. It must give him security. If it does not do so absolutely, still it must contribute to secure him.

The mode of inspection in this act is by sample. Let it be supposed that the sample has been furnished, has been inspected, has been approved, and that the certificate has been sent to the consignor, what sort of assurance does it give the citizen that this liquor he thereupon receives accords with, comes up to, or in anywise resembles the sample? What protection does it give the citizen from fraud from a failure to send liquor according to sample? None whatever. It only subjects him to the seizure and forfeiture of his goods if perchance they should be inspected. The fraudulent seller is out of reach. Upon what, then, must the citizen rely? He can only rely upon the business character, standing, and integrity of the person from whom he buys, without any regard whatever to the inspection.

This so called inspection, furnishing no security to the citizen, cannot thereby be justified. It can operate only as a restriction upon, hindrance and burden to, his acknowledged right to import for personal use. It is thus an interference with interstate commerce and is itself void.

The language in Mugler *vs.* Kansas, 123 U. S., 623, has some

application here. "If a statute purporting to have been enacted to protect the public health, the public morals, or the public
58 safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of courts so to abridge them and thereby give effect to the Constitution."

The same mode of inspection by sample would seem to be used in all the liquors issued by the State commissioner. (22 Statutes, 541.)

In Scott *vs.* Donald the supreme court, discussing a similar feature in the act of 1895, says: "To empower a State chemist to pass upon what the law calls 'the alcoholic purity' of such importations by chemical analyses can scarcely come within any definition of a reasonable inspection law." If, then, this mode of inspection be not reasonable and be futile, it is a burden on interstate commerce and in itself makes the provision void. Railroad Co. *vs.* Husen, 95 U. S., 465; Walling *vs.* Michigan, 116 U. S., 446; Minnesota *vs.* Barber, 136 U. S., 313; Brimmer *vs.* Rebman, 138 U. S., 78.

It is manifest, therefore, that the same conclusion must be reached with regard to the dispensary act of 1897 which was reached by the Supreme Court of the United States as to the act of 1895, that it is not within the scope and operation of the Wilson act. This being the case, the law laid down in Leisy *vs.* Hardin controls this case, and the attempt to forbid the importation and sale of spirituous liquors in original packages must fail.

The decision of the Supreme Court of the United States must control all circuit courts. By this decision it is clear that so long as the State herself engages in the business of importing and selling alcoholic liquors for the purposes of profit; so long as she recognizes that the use of alcoholic liquors as a beverage is lawful and can be encouraged; so long as she seeks a monopoly in supplying these liquors for that use, and in this way looks to an increase in her revenue, she cannot, under her constitutional obligations to the other States of this Union, forbid, control, hinder, and burden commerce in such articles between their citizens and her own.

Let a temporary injunction issue as prayed for in the bill.

CHARLES H. SIMONTON,
Circuit Judge.

31 May, 1897.

(Filed May 31, 1897.)

59 *Appearance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To J. E. Hagood, Esqr., clerk of the United States circuit court for the district of South Carolina:

You will please enter the name of the undersigned as solicitor appearing for the defendants in the above-entitled cause, who now formally appears for them and hereby enters his appearance.

WM. A. BARBER,
Attorney Gen'l of S. C., Solicitor for Defendants.

June 3rd. 1897.

(Filed June 3rd, 1897.)

60 *Order for Temporary Injunction.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, *et al.*, Defendants.

On hearing and filing return of defendants herein to the rule to show cause herein, dated 17 day of May, 1897, why a temporary injunction should not issue against defendants, as prayed in the bill of complaint filed in this court on the 3rd day of May, 1897, and upon motion of Bryan & Bryan, counsel for the complainant, and upon due consideration thereof, after argument by Wm. A. Barber, for defendant-, and J. K. P. Bryan, for complainant—

It is now ordered, adjudged, and decreed that a writ of temporary injunction be awarded and do issue out of this court commanding, enjoining, and restraining the defendants, S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and —— Peterman, claiming to act as State commissioner and State constables under acts of General Assembly of South Carolina of March 6th, 1896, and March

5, 1897, otherwise known as the "dispensary law," from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away, or confiscating or detaining any of the wines and liquors imported or sent into the State of South Carolina by the complainant from its said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina having
61 the mark and stamp of the complainant thereon, to wit, "W. A. Vandercook, Los Angeles, California," and "W. A. Vandercook, San Francisco and Los Angeles, California," or from hindering and preventing the complainant in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original, unbroken packages, as imported in the State of South Carolina, the wines and liquors, products of the vineyards of the complain-t, as aforesaid, for lawful use and consumption of the citizens and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in original packages as imported into the State of South Carolina by the complainant to the citizens and residents of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing the complainant or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to the complainant by the laws and Constitution of the United States, or in hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with the complainant or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by the complainant or imported and sold in original packages in the State of South Carolina by the complainant to the citizens and residents of the State of South Carolina.

3rd June, 1897.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed June 3rd, 1897.)

62 *Writ of Temporary Injunction.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, *et al.*, Defendants.

The President of the United States to S. W. Vance, claiming to act as State commissioner, and W. N. Bahr, J. M. Scott, W. Livingston and C. M. Moseley, *et al.*, claiming to act as State constables under the act of the General Assembly of South Carolina approved March 6, 1896, and March 5, 1897, otherwise known as the "dispensary law:"

Whereas in the above-entitled cause, now pending in said United States circuit court in and for the district of South Carolina, upon application duly made to the Honorable Charles H. Simonton, a circuit judge of the United States for the fourth judicial circuit of the United States, it was, on the 3rd day of June, 1897, ordered, adjudged, and decreed that a writ of injunction issue as therein prayed for in the bill of complaint herein filed and as directed in said order and decree:

Now, know ye that you, S. W. Vance, claiming to act as State commissioner, and W. N. Bahr, J. M. Scott, W. Livingston and C. M. Moseley, *et al.*, claiming to act as State constables, under the act of the General Assembly of South Carolina approved March 6, 1896, and March 5, 1897, otherwise known as the "dispensary law," your agents, servants, and attorneys, and each of you, are hereby strictly commanded, restrained, and enjoined from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away, or confiscating or detaining any of the wines and liquors imported or sent into the State of South Carolina by the complainant from its said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina having the mark and stamp of the complainant thereon, to wit, "W. A. Vandercook, Los Angeles, California," and "W. A. Vandercook, San Francisco and Los Angeles, California," or from hindering and preventing the complainant in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original, unbroken packages, as imported in the State of South Carolina, the wines and liquors, products of the vineyards of the complainants, as aforesaid, for lawful use and consumption of the citizens and residents of the State of
63 South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in

original packages as imported into the State of South Carolina by the complainant to the citizens and residents of South Carolina for their lawful use and consumption, and from interfering with or hindering and preventing the complainant or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to the complainant by the laws and Constitution of the United States, or in hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with the complainant or from holding, possessing, using, or consuming the said wines, spirituous liquors, sent into the State of South Carolina by the complainant or imported and sold in original packages in the State of South Carolina by the complainant to the citizens and residents of the State of South Carolina.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of June, 1897, and seal of said circuit court of the United States in and for the district of South Carolina.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed June 7th, 1897.)

64 *Marshal's Return of Service.*

Paul Moore, office deputy U. S. marshal, being duly sworn, says that he served the within writ personally on W. N. Bahr at Charleston on June 8, 1897; that on June 18th he served said writ personally on J. Scott and C. S. Moesley in Charleston, S. C.

PAUL MOORE,
Office Deputy U. S. Marshal.

Sworn to before me June 18, 1897.

RICHARD W. HUTSON,
Dep. C. D. C. U. S., S. C.

UNITED STATES OF AMERICA, }
District of South Carolina. }

John T. Thornton, deputy marshal, sworn, says he served the within order on S. W. Vance personally at his place of business, in Columbia, S. C., by delivering to him personally a copy thereof, at the same time exhibiting to him this original, on this 9th day of June, 1897, and he knows S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 9th day of June, 1897.
JOHN BAUSKETT, *U. S. Com'r.* [L. S.]

65 *Answer of S. W. Vance.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

The defendant S. W. Vance, now and at all times hereafter saving and reserving to himself all manner of benefit, advantage, or exception that can or may be had or taken to the many issues, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material for him to make answer to, answering, he submits to this honorable court that the complainant has not in *his* bill shown any case in e-uity or case entitling *him* to proceed against him in this honorable court, and prays all such benefit as if he had demurred to the bill, and he further interposes a plea to the jurisdiction of the court:

I. Because the bill presents no question arising under the Constitution or laws of the United States.

II. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the conviticon of any of the matters and things alleged in the bill.

66 III. Because the complainant has not in and by *his* said bill made or stated a case to entitle *him* in a court of equity to any relief against the defendants or either of them as to the matters contained in the said bill or any of them.

And this defendant, further answering, says if the court has jurisdiction:

I. He has no knowledge or information sufficient to form a belief as to the matters and things set forth in the 1st, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, and 12th paragraphs of the bill.

II. He admits the second paragraph of the bill.

III. That as to the matters and things set forth in the 5th and 6th paragraphs of the bill he knows nothing except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, S. C., on the 19th day of April, 1897, and which were received by him as such commissioner in due course of transportation, the bill of

lading for which is hereto attached and made a part of this return; that he received sixty packages, as shown in said bill of lading, and deposited them in the State dispensary, where they now are; that he received from Constable Bahr an appraisement of the said packages and contents, made by S. J. J. Browning, Wm. J. Schneider, and L. S. Byrd, on the 19th day of April, 1897, and sworn to by them, a copy of which original paper is hereto attached as a part of this return; that he did receive three telegrams from Bryan & Bryan, purporting to be attorneys for owners of said packages, in relation to the same, of about the purport stated in the fifth paragraph of the bill, and also received one letter from the said attorneys of about the same purport, and that he replied to said messages and letter and did refuse to return the said packages because he believed and was advised that as State commissioner he could
67 not return them for the reason that they had been lawfully seized by the State constables and came rightfully and legally in his possession; that he is advised that the dispensary law of South Carolina approved March 6, 1896, and as amended March 6, 1897, under which the said packages were seized and are now held by him as State commissioner, is an act in the lawful exercise of the police power of the State and is not in conflict with the Constitution of the United States and the acts of Congress; that he denies that he is financially irresponsible, as charged in the bill, and also according to the best of his information that the complainant has or will be damaged ten thousand dollars.

Defendant further says he denies he is threatening, as State commissioner or otherwise, to convert and sell the said sixty packages to the wrongful harm and injury of the complainants, but repeats that he is still holding them as a State officer charged with specific duties and not with any intent to hinder or obstruct interstate commerce or to injure the plaintiff in any way, and submits that this honorable court has no jurisdiction to interfere by way of injunction with his duties as State commissioner duly appointed and commissioned under the dispensary law; has given the official bond required, and is now and has been since the 15th day of April, 1897, engaged in discharging the duties of his said office.

WM. A. BARBER,
Att'y Gen'l, Sol'r for Def't.

68 UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me S. W. Vance, defendant, who, after being duly sworn, says that the foregoing answer is true of his own knowledge.

S. W. VANCE.

Sworn to and subscribed before me this 5th day of June, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 8th, 1897.)

69 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each,	valued at	$18.00	per case..	$36 00
1 case brandy,	" " "	4.80	" ..	4 80
14 " wine,	" " "	2.40	..	33 60
1 5-gal. keg Angelica wine,	"	1.00	per gal...	5 00
1 5- " Catawba wine, each,	"	1.00	" ..	5 00
8 gals. of claret, XXX,	"	1.00	" ..	40 00
1 gal. J. B. wine,	"	1.00	" ..	5 00
2 10-gal. kegs claret, XXX,	"	1.00	" ..	20 00
6 5-gal. — port, XX,	"	1.00	" ..	30 00
2 10-gal. kegs port, XX,	"	1.00	" ..	20 00
4 5-gal. kegs Sheny, XX,	"	1.00	" ..	20 00
7 5-gal. kegs Sheny,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, XXX,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, V,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, XX,	"	1.00	" ..	10 00
6 5-gal. kegs grape brandy,	"	2.00	" ..	60 00
1 10-gal. keg grape brandy,	"	2.00	" ..	20 00
1 5-gal. keg grape brandy, XX,	"	2.00	" ..	10 00
1 5 gal. keg grape brandy, XXX,	"	2.00	" ..	10 00
2 5-gal. keg- J. V.,	"	2.00	" ..	20 00
1 5-gal. keg rock,	"	2.00	" ..	10 00
1 half barrel Sheny wine, 27½ gal.,	"	.80	" ..	22 00

70 We, the undersigned, citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are —, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.

JOHN WOHLTMAN, *Not. Pub.*

(Filed June 8th, 1897.)

71 *Answer of Defendants Wm. Livingston, C. S. Moseley, and M. Peterman.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

The defendants C. S. Moseley, Wm. Livingston, and M. Peterman, reserving to themselves all benefit of exception or advantage that can or may be had or taken to the said bill, for answer thereto say:

I. That the defendants Wm. Livingston and C. S. Moseley are State constables, duly appointed under the dispensary law of South Carolina, and were engaged in the discharge of their duties as such at the times mentioned in the bill and are now so engaged; that M. Peterman is one of the police of the city of Charleston, and was duly appointed as such under the Metropolitan police law of the State and is now and has been for more than one year past engaged in the discharge of the duties of such position.

II. That the defendants know nothing about the matters and things set forth in the bill, except those relating to them as officers charged with the execution of the dispensary law of the State, and they deny that they have seized or threatened to seize any
72 wines or liquors proposed to be shipped by the complainant to the State, or that they have done anything or threatened to do anything to injure complainant or to break up its trade or business.

III. They admit that they are pecuniarily irresponsible, as stated in the bill, and say that they are advised that the act of the General Assembly of the State of South Carolina known as the dispensary law, approved March 6, 1896, and amended in March, 1897, authorizes them to seize all contraband liquors, and that said act is the lawful exercise of the police power of the State and is not in conflict with the Constitution of the United States and the laws of Congress.

Wherefore the defendants humbly pray to be herein dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. A. BARBER,
Att'y Gen'l, Defendants' Solicitor.

UNITED STATES OF AMERICA,
District of South Carolina.

Personally appeared before me Wm. Livingston, C. S. Moseley, and M. Peterman, who, after being respectively and duly sworn, say that the foregoing answer is true of their own knowledge.

WM. LIVINGSTON.
C. S. MOSELEY.
M. PETERMANN.

Sworn to and subscribed before me this 7th day of June, A. D. 1897.

W. P. GAILLARD, [L. S.]
Notary Public, S. C.

(Filed June 8th, 1897.)

73 *Answer of Defendants W. N. Bahr and J. M. Scott.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

These defendants W. N. Bahr and J. M. Scott, now and at all times hereafter saving and reserving to themselves all manner of benifit or advantage of exception that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer, answering, submit to this honorable court that the complainant has not in *his* bill shown any case in equity or case entitling it to proceed against them in this honorable court, and pray all such benefit as if they had demurred to the bill; and they further interpose a plea to the jurisdiction of the court:

I. Because the bill presents no question arising under the Constitution and laws of the United States to give jurisdiction to this honorable court.

74 II. Because the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court.

III. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction and redress of the matter and things alleged.

And the defendants, further answering, say if the court has jurisdiction—

That as to the matters and things set forth in the first paragraph of this bill they have no knowledge or information sufficient to form a belief and demand proof of same.

II. That they admit the allegation of the 2nd paragraph of the bill.

III. That as to the matters and things set forth in the third paragraph of the bill they have no information or knowledge sufficient to form a belief and demand proof of same.

IV. That as to the allegations of the 4th paragraph of the bill they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandies in Charleston, S. C., about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks of said city, and each package was marked J. C. Simonds, and none of them had the certificate of the State chemist showing the wines and brandies had been analyzed, as required by law.

As to the matters and things set forth in the 5th paragraph, they admit, on or about the 15th day of April, A. D. 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charleston, S. C., its point of destination, over the South Carolina and Georgia railroad, and that your defendants, as State
75 constables, did hold up seventy-three packages of wine and liquors in the depot of said railroad for investigation under the provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded, and the waybill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of First National bank, and each package was marked in his name; that after holding up said wines and brandies defendant Bahr made inquiry and investigation into the matter, and on the 18th day of April, A. D. 1897, he received through a telegram a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier First National bank, the party to whom the packages had been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina and Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages, and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that defendant Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his codefendant, and was

informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had removed them from the depot on orders of J. C. Simonds on payment
of the invoice price of same to him; that after learning these
76 facts he again seized the remaining packages left in the depot on
the 17th day of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of the same, and a copy of said appraisement, showing the number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston, to whom invoices of some of said wines and brandies had been sent, came to defendant Bahr and asked him to endorse the invoices so that they could get the packages from the depot; to all of whom he replied that he had held up nothing in their names, and had no authority to indorse the invoices, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of these invoices and also a notice from J. C. Simonds, cashier, gave to defendant Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rhode and C. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that defendant Bahr saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package.

V. They further say that R. R. Turner, the agent of the complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his house and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore defendant advised him not to ship such wines and brandies in one man's name, but to make each individual package separate, and to send to each a bill of lading. Turner then remarked that he had been shipping to
77 one man before as he proposed to ship to J. C. Simonds and
had never been molested, and he intended to do so again; that it was about three weeks after this conversation before the car-load arrived and was unloaded in the depot; that since the seizure of sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina & Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, eight packages of wine and brandies consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina & Georgia railroad; which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information from parties to whom he made effort to

sell he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said eight packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C.; and defendants deny that the seizure of said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act approved March 6, 1896, amended by act approved March 26, 1897, they had authority to seize and hold the same, a copy of which said acts is hereto attached.

VI. That as to the matters and things set forth in the sixth paragraph of the bill your defendants say that W. N. Bahr is one of the chief State constables, and that J. M. Scott, Wm. Livingston, and C. S. Moseley are State constables; that M. Peterman is one of the policemen of the city of Charleston, and S. W. Vance is State commissioner. They deny that they are threatening or have threatened all the wines to be shipped into the State by the complainant.

78 VII. That as to the matters and things stated in the seventh paragraph of the bill they have already fully answered, as they have stated that four packages were shipped to E. L. Tesssier and seized, but were returned to him, and that eight other packages have been seized consigned to J. C. Simonds and are still held, and did not seize nineteen packages, as therein stated; and they deny that they unlawfully seized said packages, but submit they had the authority to do so under the dispensary act, approved March 6, 1896, and as amended March 26, 1897, and also deny that the complainant has or will be damaged ten thousand dollars.

VIII. They know nothing about the intention of the complainant as to shipment of wines and brandies into the State from their vineyards, but deny that they have threatened to seize, take away, detain, convert, and sell any packages so to be imported by them, to the injury and damage of their trade and business.

IX. Defendants deny all the matters set forth in the ninth paragraph except those relating to letters written to them by the attorneys for the complainant, and they admit they did receive two letters—one on the 17th day of April, 1897, before the seizure of the car-load, and one afterwards—of about the import stated, but they deny that they threatened to continue to seize liquors and to break up the lawful trade, commerce, and intercourse of trade.

X. Defendants deny the matters and things charged in the bill.

XI. They deny all the matters and things set forth in the eleventh paragraph except that charging that they are pecuniarily irresponsible, and this they admit.

XII. They deny the allegations set forth in the twelfth paragraph, and submit, as they are advised, that the complainant has the adequate remedy of the law. Your defendants show that

79 from all the facts herein stated, which can be fully established, the car-load of wine and brandies was delivered to J. C. Simonds by the railroad company, and when so delivered he acquired title to the same, and the complainant cannot maintain the above; it is not the real party in interest.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged in the bill,

and they say they have made answer to matters in said bill contained which they are advised are material and necessary for them to make answer to, and as to such matters as are traversed and denied they are willing to aver, maintain, and prove as this honorable court shall direct.

And they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r

UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me W. N. Bahr and J. M. Scott, defendants, who, after being respectively and duly sworn, say—

That the foregoing answer is true of their own knowledge.

W. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 9th day of June, A. D. 1897.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed June 9th, 1897.)

(Exhibits to this bill are originals attached to response to rule in this case.)

80 *Replication.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN.

The replication of the complainant in above cause to the answers of the defendants.

This repliant, saving and reserving all advantage of exception to the manifold insufficiences of said answers, for replication thereto saith that it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore *he* prays relief as in said bill set forth.

Charleston, July 5, 1897.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed July 5th, 1897.)

81 *Final Decree.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, a Citizen and Resident of the State of California, Complainant,

vs.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN, Defendants.

This cause coming on to be heard on the pleadings and proofs annexed, and after argument of counsel for respective parties and after due consideration thereof—

Is is now ordered, adjudged, and decreed that the interlocutory injunction and decree hereinbefore decreed by this court, dated the 3rd day of June, 1897, be made permanent and do stand as the decree of this court.

It is also further ordered that the complainants, inasmuch as they have since filing of the original bill established, as therein alleged, agencies within the State of South Carolina for warehousing, storing, and selling their wines, &c., products of their California vineyards, in original, unbroken packages, as imported, must conform to all lawful police regulations of the State, to wit, may
82 only sell the same within the legal hours, in the daytime, and not to be opened or drunk on their premises, and not to be sold to minors or drunkards, and not to be sold in cities or places where all sale of intoxicating liquor by State dispenser or otherwise is prohibited by law of the State, and not to be sold to any one on Sunday.

CHARLES H. SIMONTON,
Circuit Judge.

19th Nov., 1897.
(Filed Nov. 18th, 1897.)

83 *Evidence.*

The deposition of R. R. TURNER, on behalf of plaintiff, is as follows:

I am travelling agent of The Vandercook Co., plaintiff (a resident and citizen of Virginia).

The plaintiff is a corporation created under the laws of the State of California and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" valleys, and producers of wines and brandies from the grapes.

In the months of February and March, 1897, as such travelling agent, I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and

brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same from San Francisco, consigned to their agent, J. Simonds, cashier First National bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent or person ordering same, and making a car-load lot, of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company, at Charleston, were seized by defendants W. N. Bahr and J. M. Scott, without warrant, and delivery of the same were stopped. Sixty packages, of the value of eight hundred dollars, as set forth in Exhibit "B," were taken away from the depot by defendants and shipped to defendant S. W. Vance, at Columbia, claiming to act as "commissioner," who received same about 22nd April, 1897, with full notice of the
84 trespass as above.

And on the 29th April, 1897, the defendants Bahr and Scott seized at said railroad depot, at Charleston, S. C., eight other original, unbroken packages of wines and brandies, as set forth in Exhibit "C" of the complaint, of the value of two hundred dollars, products of plaintiff's vineyards, and shipped by plaintiff to Charleston, S. C., to its agent on like orders of its customers for delivery to them, and the same were sent to Columbia, S. C., to S. W. Vance, defendant, who received them with full notice of the trespass; that after repeated demand and warning the said S. W. Vance and other defendants refused to return any of said packages; that said seizure and detention were wilfully, knowingly, and maliciously done and continued; that defendants were notified by Bryan & Bryan, counsel for W. A. Vandercook Co., as follows:

85 *Letter.*

APRIL 17, 1897.

Mr. W. N. Bahr (individually), Charleston, S. C.

DEAR SIR: We are informed by the public press that yesterday, claiming to act as a State constable, you entered the South Carolina & Georgia Railroad station, Charleston, S. C., and seized a number of packages of wines and liquors then in said depot and in due course of transportation from the W. A. Vandercook Co., California, to their several consignees marked thereon, Charleston, S. C.

You were notified by the label on said packages that you were violating the law, and we again give you notice that such action on your part was a wanton, gross, and defiant trespass and outrage for which you are liable, both criminally and in civil suits, for compensatory, punitive, and vindictive damages, and we demand that you forthwith release all such unlawful stoppage that you have attempted to make and further desist from these unlawful restraints of interstate trade and commerce, well known to you as a gross violation of rights of our clients under the Constitution of the United States.

Yours respectfully, BRYAN & BRYAN.

Telegram.

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nine-
86 teenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

Letter.

APRIL 21, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to say that we have telegraphed you this day as follows:

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nineteenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

We beg to repeat this notice to you, requesting an immediate answer.

Yours respectfully, BRYAN & BRYAN.

P. S.—We beg to say that we write this letter to you in your individual capacity and notify you that any State law under which you claim to act or under which J. M. Scott claims to act is absolutely null and void under the Constitution of the United States, as
87 you are well aware, and is no shield or shelter for his or your wrong-doing.

Yours respectfully, BRYAN & BRYAN.

Letter.

APRIL 23, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We have your telegram this day in reply to our previous demands, as follows:

"The wines and liquors seized by Constable Scott have reached me and I respectfully refuse to return the same as requested by you."

We beg again to notify you of your malicious and defiant conduct in detaining these goods and warn you that your action is without any lawful authority, and that you will be held responsible therefor by all the pains, punishments, and penalities known to the law for redress of our clients and protection of their rights under the Constitution of the United States.

We demand again return of these goods instantly, and notify you again that the law requires us to deal with you individually and personally, as you have no shadow of legal excuse and cannot shelter yourself behind any advice or direction of any official, whoever he may be.

Very respectfully, BRYAN & BRYAN.

88 *Letter.*

APRIL 28, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to acknowledge receipt this day of a letter of 25th inst., signed by yourself, S. W. Vance, but to which you have added the word "commissioner."

We beg to refer you to our former letters and telegrams to yourself, in which we have addressed you in your individual and private capacity, and have not had and do not expect to have any communication with you in this matter as a commissioner—that is, as a State official acting under any valid law of the State of South Carolina.

We have notified you that any law under which you claim to act in receiving and detaining these packages of wine, after our notice to you in advance, is unconstitutional, null, and void under the Constitution of the United States, which is the paramount and supreme law of this land.

You therefore, we have told you, had no official sanction or warrant for your participation in the malicious trespass of J. M. Scott, well known to you to be a malicious trespass, because we have distinctly notified you and warned you in advance as to your participation in the same.

We beg now to repeat our notice to you that your conduct in retaining these packages is both malicious and defiant—malicious in that you are consciously violating the property rights of our clients, breaking up their business and attempting to deter
89 them in future from exercise of their legal rights and lawful business; defiant in that you wilfully oppose the known law declared in principle by the Supreme Court of the United States after repeated warning from ourselves.

We beg to further notify you that we shall hold you responsible for this continued wrong-doing by all the processes known to the law for the vindication and protection and redress of the rights of our clients and the prevention of your wrong-doing in the future.

We beg further to say to you that this matter has no personal aspect. It is a matter of public law, binding upon all the citizens of this country, and of the common right and privilege of all the citizens of this country, and no one can give you power to be above

the law, and your attempt to do so is gross oppression and monstrous to the citizen and his right guarantied by the Constitution of the United States.

We again demand of you the delivery of possession of these sixty packages of wines, etc., and upon refusal we beg to repeat our notices and warnings to you.

Yours respectfully, BRYAN & BRYAN.

I myself also gave repeated personal verbal notices to defendants W. N. Bahr and J. M. Scott of their wrong-doing, and demanded return of the packages by them.

That, notwithstanding said notices, the defendant seized and detained said packages of wine, and same was done after full notice, as aforesaid, and with intent to oppress, humiliate, and intimidate plaintiff and make example of plaintiff and deter it and
90 others from exercising their right, privilege, and immunities of interstate trade, commerce, and intercourse with citizens and residents of South Carolina in the products of its vineyards, secured to them under Constitution and laws of the United States, and with intent to break up the plaintiff's lawful interstate trade and commerce in said products.

The plaintiff was greatly injured in its business and trade by such seizure and detention of its vine products and lost for two months its trade and business with the citizens and residents of South Carolina; that the plaintiff's actual loss thereby exceeds twelve hundred dollars.

Before, during, and after these seizures intoxicating liquors—*inter alia*, whiskey, beer, wine, and brandy—were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine, and beer within the State, and the same was used as a beverege in the State and sold within the State by State agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law (act 1896–1897), and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Same liquors, products of other States, were being imported by the State board of control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the board of control chose to import. No products of the Vandercook vineyards have ever been imported by the board of control or at any time offered for sale in State liquor dispensaries in South Carolina.

The United States Government has issued, upon applica-
91 tion, licenses for wholesale and retail liquor dealers, under the Revised Statutes of the United States, sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State.

Deposition of W. A. Vandercook, President of the Plaintiff Company, on Behalf of Plaintiff.

Since the interlocutory injunction filed in the case on — day of ——, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia, and Greenville and other cities agencies for the storing, warehousing, and selling in original, unbroken packages, as imported wines, &c., products of their California vineyards. The same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State dispenser or otherwise is prohibited, and the same are sold in original, unbroken packages as imported and not sold to minors or drunkards, not sold to be drunk on the premises or opened on the premises, are sold in the daytime within the legal hours of sale.

We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us at any time by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State.

The plaintiff, The W. A. Vandercook Co., is a corporation created by and under the laws of the State of California.

92 Deposition of W. N. BAHR, defendant, on behalf of defendant-, is as follows:

All the defendants were State constables duly appointed and commissioned under the act of the General Assembly of South Carolina known as the dispensary law, approved March 6th, 1896, amended March 5th, 1897, and acted as such constables at the time of the seizure and made the seizures under said acts.

That none of the wines and liquors imported into the State by plaintiff were inspected as required by the provision of the amendment of 1897 to the dispensary law, 1897, and none of them had attached certificates of inspection required by law.

18th Nov., 1897.

CHARLES H. SIMONTON, [L. S.]
Circuit Judge.

(Filed Nov. 18th, 1897.)

93 *Petition for Appeal.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable judges of the circuit court of the United States for the district of South Carolina:

S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman, parties to the above-entitled cause, present and file this their petition for an appeal to the Supreme Court of the United States from the final decree rendered by Hon. C. H. Simonton in the above-entitled cause on the — day of November, A. D. 1897, granting a perpetual injunction.

Hereto annexed and herewith filed with the clerk of the said court of the United States for the district of South Carolina is an assignment of errors to the said final decree, which sets out separately and particularly each error asserted and intended to be urged and upon which a reversal of the decree is asked.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r.

(Filed Nov. 18th, 1897.)

94 *Assignment of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

And now come S. W. Vance, W. N. Bahr, J. M. Scott, C. S. Moseley, and M. Peterman, defendants in the above-named cause, and except to the final decree rendered by Hon. C. S. Simonton, United States circuit judge, herein, and filed — day of November, A. D. 1897, granting a perpetual injunction against the defendants:

I. Because the bill of complaint presents no question arising under the Constitution or laws of the United States.

II. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged in the bill, if the said allegations are true.

III. Because the complainant has not in and by the said bill of complaint made or stated a case to entitle said complainant in a court of equity to any relief against them or either of
95 them as to the matters contained in said bill.

IV. Because his honor erred in holding that the provisions of an act of the General Assembly of the State of South Carolina approved March 6, 1896, and amended March 5, 1897, commonly known as the dispensary law, in so far as they forbid citizens of this State or of other States from importing ales, wines, and liquors into this State for sale in original, unbroken packages, are not a lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and interstate commerce acts of Congress.

V. Because his honor erred in holding that the provisions of the said act prohibiting the importation of liquor into this State for sale is not a valid exercise of the police power of the State and does not come within the provisions of the act of Congress of 1890, known as the "Wilson act."

VI. Because his honor erred in holding that the provisions of the said act as amended, providing for the inspection of all liquors brought into the State for use or sale, is not the lawful exercise of the police power of the State and is in contravention of the Constitution of the United States.

VII. Because his honor erred in holding that a non-resident manufacturer or dealer can import wines, ales, and liquors into the State of South Carolina and store and sell the same, either by himself or through an agent, the said agent being a citizen of this State.

96 IX. Because his honor erred in granting the perpetual injunction.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r.

(Filed Nov. 18th, 1897.)

97 *Order Allowing Appeal.*

Prayer of the petitioners granted and appeal allowed.

CHARLES H. SIMONTON,
Circuit Judge.

18th Nov. 1897.
(Filed Nov. 18th, 1897.)

98 *Appeal Bond and Approval.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

Know all men by these presents that we, W. H. Ellerbe and W. H. Timmerman, are held and firmly bound unto The W. A. Vandercook Company, a corporation, party complainant in the above case, in the penal sum of two hundred and fifty dollars; to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Columbia, S. C., on the 17th day of November, A. D. 1897.

Whereas an appeal has been allowed to S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman on their behalf from the final decree rendered by Hon. C. H. Simonton, United States circuit judge, in the above-entitled case, granting a perpetual injunction:

Now, the condition of the above obligation is such that if
99 the above-bound S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman shall prosecute their said appeal to effect and shall answer and pay all costs incurred by them if they fail to make their appeal good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

W. H. ELLERBE. [L. S.]
W. H. TIMMERMAN. [L. S.]

Signed, sealed, and delivered in the presence of—
W. W. HARRIS.

UNITED STATES OF AMERICA,
District of South Carolina.

Personally appeared before me W. H. Ellerbe and W. H. Timmerman, who, after being duly and severally sworn, say that they are freeholders in the State of South Carolina and are worth the sum of two hundred and fifty dollars over and above all their debts and liabilities and property exempt by law under execution.

W. H. ELLERBE.
W. H. TIMMERMAN. [L. S.]

Sworn to and subscribed before me this 17th day of November, A. D. 1897.

C. P. TOWNSEND, [L S.]
Not. Pub.

Approved:
CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.
(Filed Nov. 18th, 1897.)

100 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. A. Vandercook Company, plaintiff, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington on the 15th day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court for the district of South Carolina, wherein S. T. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States for the district of South Carolina, this 19 day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES H. SIMONTON,
Circuit Judge.

Service accepted Nov. 18, 1897.

BRYAN & BRYAN,
Pl'ff's Att'ys.

101 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

In the Circuit Court, Fourth Circuit. In Equity.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records, proceedings, and decree, &c., in the case of The W. A. Vandercook Company, complainant, against S. W. Vance *et al.*, defendants, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston and district aforesaid, this 20th day of November, A. D. 1897.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,727. South Carolina C. C. U. S. Term No., 514. S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, & M. Peterman, appellants, *vs.* W. A. Vandercook Company. Filed November 23d, 1897.